

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

LEAH SIMMS, TERRI LEIGH JONES,
TONYA SUE CHAVIS, and
LESLIE ANDERSON-ADAMS,

CIVIL DIVISION

CASE NO.: 2016 CA 00

Plaintiffs,

vs,

STATE OF FLORIDA, DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION and KENNETH LAWSON,
SECRETARY, in his official capacity, and
DEPARTMENT OF MANAGEMENT
SERVICES, and DMS SECRETARY,
CHAD POPPELL, in his official capacity

Defendants.

**VERIFIED COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

PLAINTIFFS, LEAH SIMMS (hereinafter "SIMMS"), TERRI LEIGH JONES (hereinafter "JONES"), TONYA SUE CHAVIS (hereinafter "CHAVIS") and LESLIE ANDERSON-ADAMS (hereinafter "ANDERSON-ADAMS"), by and through the undersigned counsel, sue DEFENDANTS, STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION (hereinafter "DBPR"), and KENNETH LAWSON, SECRETARY, in his official capacity as Secretary of the Department of Business and Professional Regulation (hereinafter "SECRETARY LAWSON"), and DEPARTMENT OF MANAGEMENT SERVICES (hereinafter "DMS"), and DMS SECRETARY CHAD POPPELL, in his official capacity as Secretary of the Department of Management Services (hereinafter "SECRETARY POPPELL") state:

1. This is an action for declaratory judgment and equitable relief pursuant to Chapter 86, Florida Statutes (2015).

2. This is an action for injunctive relief.

JURISDICTION AND VENUE

3. This court has jurisdiction pursuant to § 26.02, Florida Statutes (2015).

4. Venue is proper in Leon County, as DBPR has its principal place of business and is headquartered in Leon County, Florida, and DMS has its principal place of business and is headquartered in Leon County, Florida..

PARTIES

4. The Plaintiffs, SIMMS, JONES, CHAVIS and ANDERSON-ADAMS, are individuals who are employed by DBPR, Division of Florida Condominium, Timeshare and Mobile Homes, to act as arbitrators to conduct arbitration hearings as provided by legislative enactment of § 718.1255(3), Florida Statutes (2015).

4. Defendant, DBPR, is an Agency of the State of Florida charged with licensing and regulating businesses and professionals in the State of Florida, pursuant to Chapter 120, Florida Statutes.

5. Defendant SECRETARY LAWSON, is the head of the Department of Business and Professional Regulation, responsible for planning, directing, coordinating and executing the powers, duties and functions vested in the Department, its divisions, bureaus and other subunits.

6. Defendant, DMS, is an Agency of the State of Florida charged with administering retirement benefits and health insurance, advising on human resource policy and maintaining the state's human resource information system. The department also provides statewide telecommunication services, coordinates real estate and facilities management, oversees the state's procurement process and monitors Florida's private prisons and fleet of vehicles. pursuant to Chapter 120, Florida Statutes.

7. Defendant SECRETARY POPPELL, is the head of the Department of Management Services, responsible overseeing the agency that excels in meeting the business needs of state government and its employees so fellow Florida state agencies can focus on their core missions,

STATEMENT OF FACTS

8. SIMMS is an attorney employed by the DBPR to conduct arbitration proceedings. SIMMS has been a member of The Florida Bar, since 1977, and has previously served as an Assistant United States Attorney and a Dade County Judge.

9. JONES is an attorney employed by the DBPR to conduct arbitration proceedings. JONES was admitted to The Florida Bar in 1998.

10. CHAVIS is an attorney employed by the DBPR to conduct arbitration proceedings. CHAVIS was admitted to The Florida Bar in 1993.

11. ANDERSON-ADAMS is an attorney employed by the DBPR to conduct arbitration proceedings. ANDERSON-ADAMS was admitted to The Florida Bar in 1990.

12. There are six (6) individuals employed by DBPR to act as arbitrators.

13. The Legislature created the position by statute in 1998, by passing § 718.1255 into law. The purpose of § 718.1255 was to create a more accessible and affordable method of resolving certain kinds of disputes between condominium unit owners and their associations. § 718.1255(3).

14. The Condominium Act was enacted in 1963 as enabling legislation designed to give statutory recognition to air right conveyances, i.e. condominiums. The condominium association is the body established to provide a vehicle for coordinating the interests of co-owners in the maintenance and operation of their shared owned facilities. Florida, in 1964, did not require disclosures from developers to purchasers of units so owners essentially bought their units totally in the dark about their financial obligations as they related to the operation of the community and to the developers' aim to procure the largest pecuniary gain to which they believed they were

entitled. The extortionate use of devices like “sweetheart management contracts”, compulsory 99-year recreational leases with unconscionable escalation provisions made the legislature realize that it might be necessary to qualify condominiums through a state regulatory commission to protect the purchasers from the industry as a whole.

15. In 1971, the legislature passed amendments to the Act, in an effort to avoid more severe regulatory control. In 1972 in response to pressure from consumer groups, an 18-member Condominium Commission was created whose goal was to organize and bring together individuals representing the various interests of the industry. The commission determined it would be easier to amend the Act than to create a regulatory agency. In 1974 major revisions recommended by the commission were enacted. Some of the more important enactments were: to end the developer’s virtual perpetual control of condominium associations by creating a new formula for relinquishment of developer control; full disclosure by developers; open board meetings and access to association records. However, there were still no enforcement provisions added to the Act.

16. In 1975, the Florida Division of Land Sales and Condominiums was created to correct inconsistencies in the Act and to outline enforcement procedures which had not been a part of the original Act. The name was changed in 2008, to the Division of Florida Condominiums, Timeshares and Mobile Homes.

17. The Division has since grown into a complete regulatory agency with rule-making and enforcement authority. As it was known then, the Bureau of Condominiums was one of several bureaus that comprised the Division of Florida Land Sales and Condominiums.

18. In 1976, the entire Act was rewritten to again eliminate ambiguities and inconsistencies in the Act caused by so many amendments. The Act has been amended almost every year since its restructure in 1976. This included, outlining the method which should be used to notify

owners of annual meetings, defining what documents constitute official records of the association, the methods of accounting and removing board members prior to the expiration of their terms.

19. During the 1980's friction between unit owners and their boards grew. In 1982

Section 718.112(4), FSA read with regard to arbitration:

The bylaws of the association shall further provide, and if they do not, shall be deemed to provide for voluntary binding arbitration of internal disputes arising from the operation of the condominium among unit owners, association, their agents and assigns. The Division of Florida Land Sales and Condominiums of the Department of Business Regulation shall employ full-time arbitrators to conduct the binding arbitration hearings provided by this chapter. No person shall be employed by the department as a full-time arbitrator unless he is a member of the Florida Bar in good standing. The department shall promulgate rules of procedure to govern such binding arbitration hearings and the decision of the arbitrator shall be final; however, such decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose the parties from proceeding in a trial de novo, and if such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence. Any party may seek enforcement of the final decision of the arbitrator in a court of competent jurisdiction.

§ 718.112(4), FSA.

20. In 1990 the Condominium Study Commission was created by the legislature to study abuses by the Associations committed against its unit owners. The final study from the commission was issued in February, 1991 and instituted numerous reforms to how condominiums were to be operated.

21. In the 1991 amendments to the Act, alternative dispute resolution became mandatory and voluntary mediation was encouraged. Where mandatory arbitration was outlined, disputes had to be taken first to arbitration before seeking relief in state court litigation. This mandatory dispute resolution was to be conducted by the Division by arbitrators who must be members in good standing with the Florida Bar and full-time employees of the Division. The arbitration was to be conducted pursuant to rules of procedure promulgated by the Division and the decisions of the arbitrators were

final if a complaint for a trial de novo was not filed within thirty days of the rendition of the final order.

22. The exception to seeking trial de novo are disputes involving homeowners' associations elections pursuant to Chapter 720, Florida Statutes where the arbitrator's orders are final. The parties are prohibited from seeking trial de novo in the circuit court.

23. In 1992, the legislature created the division's arbitration program requiring certain types of disputes between associations and the association's members be submitted to arbitration prior to filing a law suit to resolve the dispute in court. In this process, a neutral third person called an arbitrator considers the facts and arguments by the parties and renders a decision. If there are disputed issues of facts, a hearing is held and each party is allowed to present witnesses and tangible evidence in support of their respective positions. If there are no disputed issues the arbitrator issues a summary final order based on the assertions in the petition for arbitration, the answer, the production of documents pursuant to orders issued by the arbitrator and the applicable law.

24. The arbitrators hear disputes arising in condominiums, homeowners' associations, cooperatives, mobile home parks and recently they have been given jurisdiction to hear and resolve issues arising from lawful termination of condominiums. In termination disputes, an owner/developer may terminate the existence of a condominium under certain conditions but must buy-out an owner's interest in his unit at a reasonable price. As in eminent domain litigation, the issue is the fair market value of a unit.

25. The work performed by the arbitrators is analogous to that performed by the experienced attorneys as Division of Administrative Hearing Judges, Judges of Compensations Claims and Public Employee Relations Commission Hearing Officers (PERC). As do arbitrators, judges of compensation claims and PERC hearings officers preside over disputes of limited

jurisdiction. The average pay for DOAH judges is \$123,564; for judges of compensation claims, \$123,564 and PERC hearing officers, \$90,047.

26. By statute, the arbitrators must be licensed attorneys thereby recognizing that arbitration proceedings are legal proceedings requiring persons with adequate legal experience to act as the adjudicator of legal disputes. Since 2008, after the current Chief Arbitrator James Earl was elevated, he began staffing the arbitrators from experienced attorneys which reduces case closure time, work product and case management. The least experienced arbitrator has been a practicing attorney for 12 years, the most experienced, 42 years. From 2008 to 2015, the arbitrators have closed 3,908 cases and only 27 parties filed notices of seeking a de novo review in circuit court.

27. The plaintiffs are currently classified under the DMS broadband classification compensation program under the occupational group and profile as senior attorney. This profile describes the work as representing the state of Florida in criminal or civil litigation, and administrative and other legal proceedings, drawing up legal documents, conducting legal research and advising agencies on legal issues and transactions. Incumbents may specialize in a single area of practice broadly in many areas of law. Some positions in this occupation may be responsible for coordinating work and supervising employees. The plaintiffs, employed as arbitrators by the DBPR, have both informally and formally attempted to have their positions classified correctly pursuant to Florida law and have their pay adjusted to conform with the pay levels of other, state-government attorneys who function as adjudicators as is required by § 110.2035(1), (5), and (6) , Fla. Stat. (2015). On May 20, 2015, the plaintiffs requested a desk audit by DBPR, as this was the procedure DBPR's personnel office stated was the appropriate method to obtain a review.

28. The plaintiffs contend that the proper broadband occupation under DMS definitions would be in the category of occupation group lawyers and judges, occupation administrative law group adjudicatory hearing officers 23-1021-16. The work performed by arbitrators is analogous to

that performed by the experienced attorneys employed as the Division of Administrative Hearing judges, judges of compensation claims and Public Employee Relations Commissions (PERC) hearing officer. Like arbitrators, judges of compensation claims and PERC hearing officers preside over disputes of limited jurisdiction.

29. After months of requesting corrective action from the Division Director with no results, in December 2014, Simms met with DBPR's human resources to inquire what plaintiffs could do to correct the misclassification.

30. On July 30, 2015, Simms, Jones and another arbitrator, Glenn Lang, met with the DBPR Deputy General Counsel Paige Shoemaker to discuss the reclassification request.

31. On July 31, 2015, Simms wrote the following email to Shoemaker:

Thank you for meeting with us yesterday. I neglected to mention that the Department must also be aware of the Lilly Ledbetter Fair Pay Act of 2009 and the Equal Pay Act when evaluating our desk audit request. Mr. Stanfield has known for over a year that we have been misclassified and paid significantly less than the PERC Hearing Officers and the RE Appeals Manager (recently reclassified). The RE Appeals Manager and seven of the nine PERC Hearing Officers are male. The CTMH Arbitration Section is majority females as four out of six are female.

As you know, the Lilly Ledbetter Act has expanded the definition of equal pay discrimination to include both decisions and practices of employers. As pointed out in our desk audit request, our job duties are highly similar to these positions. There is no justifiable reason that CTMH Arbitrators are receiving a significantly lower salary than our male counterparts in other agencies. Please include this concern to the ones we discussed with you yesterday.

32. On May 20, 2015, the plaintiffs requested a desk audit by DBPR to review their classification as this was the procedure DBPR's personnel office stated was the appropriate method to obtain a review.

33. On August 25, 2015, plaintiffs were notified by DBPR that a desk audit was not the proper procedure and, once again, refused to reclassify the positions, misreading the statute and erroneously determining that the plaintiffs, as arbitrators, do not adjudicate cases, but merely

function as senior attorneys representing the State of Florida. This position was based on a conclusion that the standard of review by circuit courts negates the adjudicatory function of their position.

34. Subsequently, DBPR referred the matter to the Department of Management Services (DMS), to evaluate the plaintiffs' request for reclassification of their positions pursuant to Florida Statutes. On November 23, 2015, DMS announced its determination that admits that once again refused to approve plaintiffs' request for reclassification.

COUNT I
Action for Declaratory Relief

35. Paragraphs 1 through 34 are realleged and reincorporated by reference, as if set forth in full herein.

36. This is an action for Declaratory Relief and for supplemental, legal and equitable relief, pursuant to Chapter 86, Florida Statutes and Chapter 110.2035, Florida Statutes.

37. The plaintiffs are interested parties whose legal rights and privileges are affected by their classification under §§ 718.1255(4) and 110.2035, Fla. Stat. (2015). The plaintiffs believe that their individual, legal rights and privileges have been substantially affected by the DBPR and DMS by the misreading of §§ 718.1255(4) and 110.2035, Fla. Stat. (2015), concerning their classification as senior attorneys. The plaintiffs submit that the proper classification is as an adjudicatory officer in the broad group lawyers and judges or in the occupation administrative law judges and adjudicatory hearing officer.

38. The adverse legal interest of the parties are of sufficient immediacy and materiality to warrant a declaratory judgment.

39. This relief is not advisory in nature because the misreading of §§ 718.1255(4) and 110.2035, Fla. Stat. (2015), by DBPR and DMS has affected the rights of the plaintiffs to

compensation to which they are each entitled, under a correct application of Florida Statutes 718.1255 and 110.2035, to their job classification.

40. The plaintiffs respectfully request this Court enter an order declaratory stating that DBPR and DMS have misclassified the work performed by the plaintiffs and reclassifying the plaintiffs to similar positions held by PERC hearing officers, which is in the profile legal occupational group lawyers and judges occupation administrative law judge or adjudicator/hearing officer retroactive to December 11, 2014.. The plaintiffs ask this Court to reserve jurisdiction to provide further relief as the Court deems necessary and proper.

41. The plaintiffs have retained Gary Lee Printy, Attorney at Law, 1804 Miccosukee Commons Drive, Suite 200, Tallahassee, Florida 32308 and agreed to pay him a fee for his professional services.

WHEREFORE, the Plaintiffs request this Honorable Court for a declaration pursuant to Chapters 86 and §§ 718.1255(4) and 110.2035, Fla. Stat. (2015), that the plaintiffs classification as senior attorneys by the DBPR is null and void and otherwise unenforceable and request that the plaintiffs be reclassified as adjudicatory hearing officers along with a reasonable attorneys fees retroactive to December 11, 2014, including contingency fee multiplier, court costs and actual damages, including back pay, front pay, and any such other relief as this Court deems appropriate and necessary.

VERIFICATION

I affirm under the penalty of perjury that the foregoing document is true and correct to the best of my personal knowledge, information and belief.


LEAH SIMMS

I affirm under the penalty of perjury that the foregoing document is true and correct to the best of my personal knowledge, information and belief.


TERRI LEIGH JONES

I affirm under the penalty of perjury that the foregoing document is true and correct to the best of my personal knowledge, information and belief.


TONYA SUE CHAVIS

I affirm under the penalty of perjury that the foregoing document is true and correct to the best of my personal knowledge, information and belief.


LESLIE ANDERSON-ADAMS

Respectfully submitted,

/s Gary Lee Printy

GARY LEE PRINTY

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